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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

TIANA ARBUCKLE,

Plaintiff and Respondent,

v.

ELIJAH SIMMONS,

Defendant and Appellant.

B256414

(Los Angeles County  
Super. Ct. No. BQ043425)

APPEAL from orders of the Superior Court of Los Angeles County, Marc D.  
Gross, Judge. Affirmed.

Elijah Simmons, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## I. INTRODUCTION

In this domestic violence case, defendant, Elijah Simmons, appeals from a restraining order that was issued against him on February 26, 2014. The order was applied for by plaintiff, Tiana Arbuckle. No brief has been filed on appeal by plaintiff. Defendant contends the orders are not supported by substantial evidence because they were based on false allegations. We affirm.

## II. FACTUAL AND PROCEDURAL HISTORY

The parties are the parents of A.S. (the child) who lived with plaintiff. On February 5, 2014, a temporary domestic violence restraining order was issued ex parte prohibiting defendant from harassing or contacting: plaintiff; the child; or plaintiff's son. And defendant was ordered to stay away from them. The trial court also issued a child custody and visitation order. Plaintiff's restraining order application describes acts of physical violence by defendant against her and incidents where he chased or followed her car. Plaintiff alleges under oath he filed false child abuse reports against her. A social worker from the Department of Children and Family Services advised plaintiff to obtain a restraining order. A hearing on the request for restraining orders was set for February 26, 2014.

At the February 26, 2014 hearing, the trial court reviewed plaintiff's proof of personal service on defendant of the restraining order papers, including notice of the application. Defendant did not appear. Plaintiff testified that, after he was served with the temporary restraining order, defendant: contacted her; sent her threatening messages; followed her; and broke the window of the house where she was staying. Plaintiff testified that, in the most recent incidents before the temporary restraining order was issued, defendant threatened to hurt her if she did not let him see the children. And plaintiff testified defendant chased her and the children in the car. The trial court issued the requested restraining order for three years and gave plaintiff sole legal and physical

custody of the child. The trial court ordered that visitation would at the mother's discretion.

### III. DISCUSSION

As noted, defendant contends substantial evidence does not support the judgment. Defendant recites in his brief his version of the events. In addition, defendant alleges he was not served with the temporary restraining order. Defendant asks us to consider this evidence, which was not presented to the trial court at the hearing. We deny defendants' request to consider allegations not supported by testimony at the trial.

None of these allegations were presented in the trial court. We may not consider evidence that was not presented in the trial court. (*In re Zeth S.* (2003) 31 Cal.4th 396, 400, 405; *BNSF Railway Co. v. Superior Court* (2015) 235 Cal.App.4th 591, 598; *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578; see Cal. Rules of Court, rule 8.204 (a)(2)(C) [the statement of facts in an appellant's opening brief is "limited to matters in the record"].) Limiting our review to matters presented in the trial court, we conclude there is substantial evidence defendant committed acts of physical violence and abuse against plaintiff. Moreover, defendant makes no argument that the evidence in the trial court is not adequate to support the orders. As the orders are based on substantial evidence, they must be affirmed.

#### IV. DISPOSITION

The orders are affirmed. No costs are awarded on appeal.

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TURNER, P. J.

We concur:

MOSK, J.

KIRSCHNER, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.